

**REMARKS**

Claims 1 and 19 have been amended. Claims 1-8 and 10-19 are currently pending in the application. Applicant reserves the right to pursue the original claims and other claims in this and other applications.

Claims 1-4, 13-15 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kimura in view of Ohsato. This rejection is respectfully traversed.

Claim 1 is amended to recite, among other things, “substantially no light reflected by the first recording layer reaches the second photo detecting section, and substantially no light reflected by the second recording layer reaches the first photo detecting section that is adjacent to the second photo detecting section.” This feature of claim 1 is a distinction over the asserted combination of references.

The Office Action on page 3 equates the light detecting element 532 of Kimura to the recited first photo detecting section, and also equates the light detecting element 534 of Kimura to the recited second photo detecting section. As shown in Fig. 8 of Kimura, however, the light detecting element 532 and the light detecting element 534 are not adjacent to each other. Accordingly, the light detecting elements 532 and 534 cannot be equated to the recited first and second photo detection sections in view of the above-noted feature of claim 1, namely “substantially no light reflected by the first recording layer reaches the second photo detecting section, and substantially no light reflected by the second recording layer reaches the first photo detecting section that is adjacent to the second photo detecting section.”

In Kimura, the light detecting elements 532 and 533 are adjacent to each other as shown in Fig. 8. However, they cannot be equated to the first and second photo detecting sections of claim 1. This is because the light detecting element 533 detects both the light reflected by the first optical information layer 511 and the light reflected by the second optical information medium layer 512. This is clearly stated in Kimura at column 7, lines 11 to 19: “the reflected light from the first optical information medium layer 511, to which the objective lens 41 is adjusted to be in focus, falls half-and-half on the two light detecting elements 532, 533”

and “the reflected light 84 from the second optical information medium layer 512, which is the neighboring layer of the first optical information medium layer 511, falls on the two light detecting elements 533, 534.”

Accordingly, Kimura fails to disclose the above-noted feature of claim 1, as amended, namely “substantially no light reflected by the first recording layer reaches the second photo detecting section, and substantially no light reflected by the second recording layer reaches the first photo detecting section that is adjacent to the second photo detecting section.”

Ohsato also fails to disclose the above-noted feature of claim 1. It should be noted that, in the optical system shown in Fig. 1 of Ohsato, laser light reflected from the recorded surface 6 passes through the prism 7 to reach the photodetector 8. Accordingly, all the light paths illustrated in Figs. 3A through 3C of Ohsato are those of the laser light reflected from the single recorded surface 6. There is no way Ohsato can teach or suggest the light reflected by the first recording layer and the light reflected by the second recording layer as recited in claim 1.

Since the Kimura and Ohsato combination does not teach or suggest all of the limitations of claim 1, claim 1 is not rendered obvious over the cited references. Claims 2-4 and 13-15 depend from claim 1 and are patentable at least for the reasons mentioned above. Claim 19 contains limitations similar to those of claim 1 and is allowable at least for reasons similar to those discussed above with regard to claim 1. Accordingly, Applicant respectfully requests that the rejection be withdrawn and the claims allowed.

Claims 5-8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kimura in view of Ohsato and further in view of Inoue. This rejection is respectfully traversed.

Claims 5-8 depend from claim 1, which is allowable over Kimura and Ohsato as stated above. Applicant respectfully submits that Inoue, which has been cited as teaching that the light splitting unit is a hologram, fails to cure the deficiencies of Kimura and Ohsato. Accordingly, Applicant respectfully requests that the rejection be withdrawn and the claims allowed.

Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kimura in view of Ohsato and further in view of Ogasawara. This rejection is respectfully traversed.

Claim 10 depends from claim 1, which is allowable over Kimura and Ohsato as stated above. Applicant respectfully submits that Ogasawara, which has been cited as teaching a light condensing unit being driven in a direction of an optical axis of the light condensing unit, fails to cure the deficiencies of Kimura and Ohsato. Accordingly, Applicant respectfully requests that the rejection be withdrawn and the claim allowed.

Claim 11 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kimura in view of Ohsato and further in view of Magnitski. This rejection is respectfully traversed.

Claim 11 depends from claim 1, which is allowable over Kimura and Ohsato as stated above. Applicant respectfully submits that Magnitski, which has been cited as teaching a photosensor moved along the Z axis, fails to cure the deficiencies of Kimura and Ohsato. Accordingly, Applicant respectfully requests that the rejection be withdrawn and the claim allowed.

Claim 12 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kimura in view of Ohsato and further in view of Tada. This rejection is respectfully traversed.

Claim 12 depends from claim 1, which is allowable over Kimura and Ohsato as stated above. Applicant respectfully submits that Tada, which has been cited as teaching an opto-electrical device having a refractive index changing in response to an applied voltage, fails to cure the deficiencies of Kimura and Ohsato. Accordingly, Applicant respectfully requests that the rejection be withdrawn and the claim allowed.

Claim 16 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kimura in view of Ohsato and further in view of Maeda. This rejection is respectfully traversed.

Claim 16 depends from claim 1, which is allowable over Kimura and Ohsato as stated above. Applicant respectfully submits that Maeda, which has been cited as teaching a signal selecting unit, fails to cure the deficiencies of Kimura and Ohsato. Accordingly, Applicant respectfully requests that the rejection be withdrawn and the claim allowed.

Claim 17 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kimura in view of Ohsato, further in view of Magnitski, Tada and Maeda. This rejection is respectfully traversed.

Claim 17 depends from claim 1, which is allowable over Kimura and Ohsato as stated above. Applicant respectfully submits that Magnitski, which has been cited as teaching a photosensor moved along the Z axis, Tada, which has been cited as teaching an opto-electrical device having a refractive index changing in response to an applied voltage, and Maeda, which has been cited as teaching a signal selecting unit, fail to cure the deficiencies of Kimura and Ohsato. Accordingly, Applicant respectfully requests that the rejection be withdrawn and the claim allowed.

Claim 18 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kimura in view of Ohsato, further in view of Tada and Maeda. This rejection is respectfully traversed.

Claim 18 depends from claim 1, which is allowable over Kimura and Ohsato as stated above. Applicant respectfully submits that Tada, which has been cited as teaching an opto-electrical device having a refractive index changing in response to an applied voltage, and Maeda, which has been cited as teaching a signal selecting unit, fail to cure the deficiencies of Kimura and Ohsato. Accordingly, Applicant respectfully requests that the rejection be withdrawn and the claim allowed.

In view of the above, Applicant believes the pending application is in condition for allowance.

Dated: May 20, 2009

Respectfully submitted,

By Amy Kuo

Mark J. Thronson

Registration No.: 33,082

Amy M. Kuo

Registration No.: 62,374

DICKSTEIN SHAPIRO LLP

1825 Eye Street, NW

Washington, DC 20006-5403

(202) 420-2200

Attorneys for Applicant